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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,571	01/23/2006	Ye-Sun Joung	3364P212	6863
7590 Blakely Sokoloff Taylor & Zafman 12400 Wilshire Boulevard 7th Floor Los Angeles, CA 90025			EXAMINER ENGELSKIRCHEN, JEREMY D	
			ART UNIT 2168	PAPER NUMBER
			MAIL DATE 01/23/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/532,571

Applicant(s)

JOUNG ET AL.

Examiner

JEREMY D. ENGELSKIRCHEN

Art Unit

2168

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: The filing of the Certified Translation after a final rejection is considered new evidence and will require further search and/or consideration. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-12.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Tim T. Vo/
Supervisory Patent Examiner, Art Unit 2168

Continuation of 11. does NOT place the application in condition for allowance because: The filing of the Certified Translation after a final rejection is considered new evidence and will require further search and/or consideration. Examiner notes that pursuant to 37 C.F.R. 1.116, (e), "An affidavit or other evidence submitted after a final rejection or other final action (§ 1.113) in an application or in an ex parte reexamination filed under § 1.510, or an action closing prosecution (§ 1.949) in an inter partes reexamination filed under § 1.913 but before or on the same date of filing an appeal (§ 41.31 or § 41.61 of this title), may be admitted upon a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented." However, applicant did not show reasons why the translation was not earlier presented. See Applicant's Remarks made on 5/23/2008 which show applicants reasons to not rely on the earlier priority date and not file the certified English translation until after the Final Rejection was mailed on 8/13/2008. The English translation was filed after a final rejection which is not in a timely manner. Examiner also refers applicant to MPEP 201.15 which states "The only times during ex parte prosecution that the examiner considers the merits of an applicant's claim of priority is when a reference is found with an effective date between the date of the foreign filing and the date of filing in the United States and when an interference situation is under consideration. If at the time of making an action the examiner has found such an intervening reference, he or she simply rejects whatever claims may be considered unpatentable thereover, without paying any attention to the priority date (assuming the papers have not yet been filed). The applicant in his or her reply may argue the rejection if it is of such a nature that it can be argued, or present the foreign papers for the purpose of overcoming the date of the reference. If the applicant argues the reference, the examiner, in the next action in the application, may specifically require the foreign papers to be filed in addition to repeating the rejection if it is still considered applicable, or he or she may merely continue the rejection." In those cases where the applicant files the foreign papers for the purpose of overcoming the effective date of a reference, a translation is required if the foreign papers are not in the English language. When the examiner requires the filing of the papers, the translation should also be required at the same time. This translation must be filed together with a statement that the translation of the certified copy is accurate. When the necessary papers are filed to overcome the date of the reference, the examiner's action, if he or she determines that the applicant is not entitled to the priority date, is to repeat the rejection on the reference, stating the reasons why the applicant is not considered entitled to the date. If it is determined that the applicant is entitled to the date, the rejection is withdrawn in view of the priority date. If the priority papers are already in the file when the examiner finds a reference with the intervening effective date, the examiner will study the papers, if they are in the English language, to determine if the applicant is entitled to their date. If the applicant is found to be entitled to the date, the reference is simply not used but may be cited to applicant on form PTO-892. If the applicant is found not entitled to the date, the unpatentable claims are rejected on the reference with an explanation. If the papers are not in the English language and there is no translation, the examiner may reject the unpatentable claims and at the same time require an English translation for the purpose of determining the applicant's right to rely on the foreign filing date."